

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION  
OF THE STATE OF MONTANA

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In the matter of the Appeal of )  
LYNN HILLER, et al. ) ~~DECISION AND ORDER~~

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This Appeal is from a decision of the Missoula County Superintendent of Schools issued June 22, 1981.

Both parties have appealed from that decision and pursuant to Notice and Schedule issued by this office, briefs and reply briefs were submitted by each side. Neither party has requested oral argument and since the time for such request has expired this matter is deemed ready for decision.

The basic issue presented by the Appeal arises from the decision made by the Board of Trustees of School District No. 1, Missoula County, made on March 9, 1981 which established Roosevelt, Meadow Hills, C.S. Porter, Washington and Lowell as upper grade schools and Paxson, Willard, Cold Springs, Russell, Hawthorne, Dickinson, Franklin, Jefferson, Lewis and Clark and Whittier as lower grade schools. The decision on March 9, 1981 culminated a longstanding concern of the Board of Trustees regarding the organization and structure of its schools in Missoula County. The decision of the Board of Trustees was brought before the County Superintendent and heard on May 28, May 29, June 1, June 2 and June 3, 1981. The testimony covers over 500 pages of transcript and includes the testimony of the individual members of the Board of Trustees, parents, administrative officers and expert witnesses.

The decision issued on June 22, 1981 contains findings of fact, conclusions of law and decree. That decision is subject to review by the State Superintendent of Public Instruction pursuant to the Administrative Procedure Act of Montana found in Section 2-7-704, M.C.A., which



provides :

2-7-704. Standards of review. (1) The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the agency not shown in the record, proof thereof may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

(2) The court may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure.
- (d) affected by other error of law.
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record;
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
- (g) because findings of fact, upon issues essential to the decision, were not made although requested. (Emphasis supplied.)

Specifically, the conclusions of law set forth by the Missoula County Superintendent provided in part:

II. The Board of Trustees of School District No. 1 abused its discretion by acting arbitrarily and capriciously in approving the motion of March 9, 1981 as the organizational plan for District No. 1 as the Board did not have a sufficiently detailed plan before it to vote upon.

III. The Superintendent of Schools of Missoula County has a legal authority to vacate the March 9, 1981 and May 6, 1981 decisions of the Board of Trustees of School District No. 1 regarding the reorganizational plan and to remand the matter to the Board for further action consistent with these findings. (Emphasis supplied.)

Looking first to the Montana Constitution, Article X, Section 8 provides:

School District Trustees. The supervision and control of schools in each school district shall be vested in a board of trustees to be elected as provided by law.

The statutory powers of the county superintendent are set forth in Section 20-3-205, M.C.A.

Several statutes set forth the power and duties of the board of trustees, including Section 20-3-324, M.C.A., (2), (7), (16), (17) and Section 20-6-501,

M.C.A.

There is no question that the County Superintendent had the authority, under Section 20-3-210, M.C.A., to hear this controversy Appeal from a decision of the Board of Trustees.

As can be noted above, no specific statutory authority was found by the County Superintendent in his decision to have been violated by the March 9, 1981 decision of the Board of Trustees of Missoula School District No. 1. In addition, both parties have cited the case of School District No. 12 vs. Hughes and Colberg 170 Mt. 267, 552 P. 2d. 328 (1976) in support of their positions. While that case does provide that local boards of trustees are subject to legislative control and do not have control over local schools to the exclusion of other governmental entities, there are no statutory limitations on the power of the local board to reorganize in the manner accomplished by the March 9, 1981 decision. Specifically, there is no statutory definition as to what is to be included or excluded from a "reorganization plan." The transcript in the instant case is replete with testimony and exhibits indicating the extensive review accorded the subject of the reorganization of Missoula elementary schools. Based on a review of the transcript and exhibits and the decision of the Missoula County Superintendent, there does not appear to me to be an abuse of discretion or arbitrary and capricious action exercised by a majority of the District Trustees at their March 9, 1981 meeting. Indeed, what the County Superintendent's ruling appears to be about is whether or not the Missoula County Superintendent has the constitutional or statutory authority to determine the elements of a reorganizational plan. I hold that he does not. The Missoula County Superintendent's conclusions of law, II. and III., relating to that plan are reversed on the grounds and for the reasons that the decision of the Missoula County

Superintendent was in excess of his constitutional and statutory authority and constituted error as a matter of law.

This is not to say that the County Superintendent serves no function in the administrative structure of school governance in Missoula County. To be sure, it was before him that the full story of the facts and circumstance surrounding this decision were brought out. It was before him that these matters were given a full and fair hearing. This is an essential role in the governance of local schools which I intend to support whenever possible. In the instant case, however, a conflict between the Board and the County Superintendent must be resolved in favor of the discretion granted to the Board of Trustees by the Constitution and statutes of this state. See Article X, Section 8, Montana Constitution, Section 20-3-324, M.C.A., and 20-6-501, M.C.A.

The decision of the Missoula County Superintendent, dated June 22, 1981, is vacated and reversed and the decision of the Missoula County School District No. 1 of March 9, 1981 is reinstated.

DATED OCTOBER 29, 1981.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION  
OF THE STATE OF MONTANA

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In the matter of the Appeal of        }  
LAYMEYER, RENNER and SIBLEY        }        DECISION AND ORDER

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This is an appeal from the Decision of Valley County Superintendent of Schools, ALFREDA S. DRABBS, rendered December 19, 1980, which upheld the Decision of the Board of Trustees for School District No. 13 to continue with a half day Kindergarten program.

This appeal arises because of the decision of the local Board of Trustees to continue a half day Kindergarten program after numerous hearings at which the appellants or some of them were present and after the submission of evidence and testimony by others to the Board. The decision of the Board of Trustees for School District No. 13 was appealed to the County Superintendent who rendered a decision affirming the ruling of the Board of Trustees.

This matter was noticed for submission to all parties and the time for submission of documents having expired, it appears that the parties have submitted all of their arguments and reasons related to this appeal.

It appears from the documents submitted by the appellants that they are 'dissatisfied with the decision of the Board of Trustees based on the sufficiency of the investigation and evidence available to the Board at the time its decision was made. The Trustees rely on Montana law which establishes the rule of the Board of Trustees as well as certain policy statements from the Board of Public Education and the State Superintendent of Public Instruction.

In view of this dispute over the facts submitted to the Trustees, I feel that the issue raised herein deals with the sufficiency of the facts available to the Trustees, upon which their decision is based. From the transcript it appears that several public meetings or hearings were held